IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1124 OF 2005

Mrs.Shivangi Shakti Kapoor : Petitioner

V/s.

Municipal Corporation of Greater Mumbai

& Anr. : Respondents

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Mr.A.R.Pande for the petitioner.

Mr.A.J.Bhor for respondent no.1.

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CORAM : S.A. BOBDE, J.

June 24, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Bhor waives service of rule on behalf of the respondent no.1.

Heard by consent.

2. The petitioner is aggrieved by the order rejecting her Chamber Summons for amendment.

3. The petitioner has sued the BMC against a notice under section 351 of the Bombay Municipal Corporation Act. In the suit, she applied by way of Chamber Summons on

12.9.2003 that she came to know recently that the suit structure featured in the census of 1977. This was with the object of proving in the Court that the structure was in existence in its present form in the year 1977. This application has been rejected by the Court on the ground that there is no pleading in the suit about the census of the structure in the year 1977. The Court has prima facie accepted the submission of the Corporation that if the assessment was for the first time made on 1.4.1980, then the structure could not have been censused in the year 1977 and, therefore, its authenticity is in doubt.

4. I am of view that the rejection is based on appreciation of evidence which is not strictly a relevant consideration for allowing or disallowing amendment. The petitioner whose structure is under threat of demolition is entitled to adduce such evidence as is felt necessary to prove her case. I am, therefore, of view that the amendment has been wrongly rejected. Mr.Bhor, learned counsel for the respondent no.1, submitted that the same census with the same structure has been relied on by occupants of other structures who have filed other suits. The respondent no.1 will be at liberty to point this out to the Court at the appropriate stage. Appropriate action, in accordance with law, can be taken against the

petitioner in case it is found that the evidence which is tendered is false.

5. The chamber Summons No.1174 of 2003 is allowed. The rule is made absolute in the aforesaid terms.

Sd/-

S.A. BOBDE, J.